

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

NO. 4:17-CR-6006-EFS

Plaintiff,

ORDER ENTERING RULING FROM JUNE
20, 2017 PRETRIAL CONFERENCE

SAMUEL ALFREDO CAMPOS,

Defendant.

A pretrial conference occurred in this matter on June 20, 2017.

Defendant Samuel Alfredo Campos was present, represented by Nicholas Wright Marchi. Assistant U.S. Attorney Laurel J. Holland appeared on behalf of the U.S. Attorney's Office. Before the Court was Defendant's Motion to Dismiss Case, ECF No. 44. At the pretrial conference, the Court denied the motion. This Order memorializes and supplements the Court's oral ruling.

Defendant is charged with being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). Defendant moved for dismissal of the indictment based on the argument that he did not have a qualifying felony for felon in possession purposes. Specifically, Defendant argued that because his two prior felonies were juvenile adjudications under Washington state law, they did not qualify as felony predicates. The Government responded that the adjudications do

1 qualify as predicates for the purposes of a felon in possession charge
2 under 18 U.S.C. § 922(g)(1). ECF No. 46. It is undisputed that
3 Defendant's two juvenile adjudications each carried a sentence of over
4 one year.

5 As used in 18 U.S.C. § 922(g), "crime punishable by imprisonment
6 for a term exceeding one year" is determined based on "the law of the
7 jurisdiction in which the proceedings were held." 18 U.S.C.
8 § 921(a)(20). Whether Defendant's prior Washington juvenile
9 adjudications qualify as felonies is therefore determined by
10 Washington state law.

11 A Washington statute expressly states: "An order of court
12 adjudging a child a juvenile offender or dependent under the
13 provisions of this chapter shall in no case be deemed a conviction of
14 crime." RCW 13.04.240. This initially appears to support Defendant's
15 argument. Other provisions of Washington law, however, make clear that
16 there are situations in which juvenile adjudications are considered
17 prior convictions. For example, the Washington analogue to the federal
18 felon in possession statute makes clear that either an adult or a
19 juvenile can be guilty of the crime of unlawful possession of a
20 firearm after having been convicted of a serious offense. RCW
21 § 9.41.040(1)(a). Under the statute, "a person has been 'convicted',
22 whether in an adult court or *adjudicated in a juvenile court*, at such
23 time as a plea of guilty has been accepted, or a verdict of guilty has
24 been filed" RCW § 9.41.040(3) (emphasis added). This indicates
25 that Defendant's prior juvenile adjudications would qualify as
26

1 predicates under state law, and would therefore also qualify as prior
2 felony convictions under §§ 921(a)(20) and 922(g)(1).

3 Defendant argues that, although his prior juvenile adjudications
4 were felony adjudications, using the adjudications as predicate
5 offenses violates his right to due process because he did not have a
6 right to a jury trial for the juvenile proceedings. In *United States*
7 *v. Tighe*, the Ninth Circuit held that juvenile convictions where the
8 Defendant did not have a right to a jury trial did not fall under the
9 general rule that prior convictions need not be found by a jury to
10 serve as a valid basis for increasing a sentence, and such juvenile
11 convictions must therefore be found by a jury beyond a reasonable
12 doubt in order to serve as the basis for a sentence enhancement. 266
13 F.3d 1187, 1191-95 (9th Cir. 2001). That requirement is necessarily
14 satisfied in a felon in possession case.

15 To prove a violation of § 922(g)(1) "the government must prove
16 three elements beyond a reasonable doubt: (1) that the defendant was a
17 convicted felon; (2) that the defendant was in knowing possession of a
18 firearm; and (3) that the firearm was in or affecting interstate
19 commerce." *United States v. Beasley*, 346 F.3d 930, 933-34 (9th Cir.
20 2003). The existence of Defendant's prior convictions is thus an
21 element of the felon in possession offense, and, unlike use of a
22 predicate conviction as the basis for a sentencing enhancement, a jury
23 in this case would be required to find beyond a reasonable doubt that
24 a prior conviction existed in order to convict Defendant of being a
25 felon in possession of a firearm. Accordingly, there is no *Tighe*
26 violation. See also *United States v. Marks*, 379 F.3d 1114, 1119 (9th

1 Cir. 2004) ("The focus of the inquiry under §§ 921(a)(20) and
2 922(g)(1) is whether someone has been convicted of a felony under
3 state law, not whether that conviction is constitutionally valid.").

4 Defendant also suggests that the 2002 amendments to the
5 Washington Sentencing Reform Act – which allowed juvenile convictions
6 to be considered in calculating an adult offender's score for
7 sentencing purposes – cannot be applied retroactively to Defendant
8 because his prior convictions occurred before 2002. The Court finds,
9 however, that the Sentencing Reform Act has no application to this
10 case. This is not an issue of whether a predicate offense can be used
11 for sentencing enhancement purposes, but is instead simply a question
12 of whether Defendant's prior convictions qualify as prior convictions.
13 The more relevant state law, the Washington felon in possession
14 statute, added the language expressly allowing juvenile adjudications
15 to serve as predicate convictions in 1996 – before Defendant's
16 convictions in this case. See 1996 Wash. Legis. Serv. Ch. 295. In
17 addition, even if the Washington Sentencing Reform Act was relevant
18 here, in the case cited by Defendant, *State v. Varga*, 86 P.3d 139
19 (Wash. 2004) (en banc), the Washington Supreme Court held that
20 juvenile convictions entered prior to the 2002 amendments to the Act
21 are properly considered predicates at sentencing for crimes committed
22 after 2002.

23 Finally, in *United States v. Mendez*, the Ninth Circuit affirmed
24 a district court's denial of a motion to dismiss in a felon in
25 possession case where the defendant made an argument similar to the
26 one before this Court. 765 F.3d 950 (9th Cir. 2014). The Ninth Circuit

held as follows: "Under Washington law, we conclude that [Defendant's] 2007 juvenile adjudication constitutes a 'conviction' of 'a crime punishable by imprisonment for a term exceeding one year.'" *Id.* at 953 (quoting 18 U.S.C. §§ 921(a)(20), 922(g)(1)). The Ninth Circuit explained that, while Washington does not treat juvenile adjudications as "crimes" when the offenders are juveniles, such adjudications are treated as prior convictions for adult offenders and therefore constitute prior convictions under § 922(g)(1). *Id.* at 952.

The Court therefore finds that Defendant's prior Washington convictions, each carrying a possible sentence of over one year, qualify as prior felonies under § 922(g)(1), despite the fact that the crimes were committed when Defendant was a juvenile. Thus, the charge of felon in possession of a firearm is appropriate, and the motion to dismiss is denied.

Accordingly, IT IS HEREBY ORDERED: Defendant Samuel Alfredo Campos's Motion to Dismiss Case, ECF No. 44, is DENIED.

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to all counsel and the U.S. Probation Office.

DATED this 26th day of June 2017.

s/Edward F. Shea
EDWARD F. SHEA
Senior United States District Judge